

APPEAL NO. 010069

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 6, 2000. With respect to the single issue before him, the hearing officer determined that the appellant's (claimant) impairment rating (IR) is 13% as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In his appeal, the claimant essentially argues that the hearing officer erred in giving presumptive weight to the designated doctor's IR and asks that we render a new decision that his IR is 46% as certified by his treating doctor. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the carrier accepted liability for a _____, compensable injury and that the claimant reached maximum medical improvement (MMI) on April 14, 1999. Dr. TS was selected by the Commission to serve as the designated doctor after the claimant's initial certification of MMI and IR was disputed. In a Report of Medical Evaluation (TWCC-69) dated December 17, 1999, Dr. TS certified that the claimant reached MMI on April 14, 1999, with an IR of 13%, which was all assigned under Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association for a surgically treated disc lesion with residual symptoms at multiple levels of the spine. Dr. TS did not assign a specific disorder rating for either the cervical or thoracic spine, and likewise did not assign a rating for loss of range of motion (ROM) in the cervical and thoracic spine because the claimant's ROM testing in those areas was within normal limits. Dr. TS noted in his narrative report that he did not measure ROM in the claimant's lumbar spine because of the recency of the claimant's lumbar surgery.

Dr. ES, the claimant's treating doctor, has assessed a 46% IR, which is comprised of specific disorder ratings for the cervical, thoracic and lumbar spine, ratings for loss of cervical and lumbar ROM, and a rating for lumbar neurological deficit. Several letters of clarification were sent to the designated doctor and he was also asked to reexamine the claimant in order to test lumbar ROM. In response to those requests, Dr. TS reexamined the claimant on June 30, 2000; however, he did not change his 13% IR. In his response to the requests for clarification, Dr. TS stated that he did not assign a specific disorder rating or loss of ROM rating for either the cervical or thoracic spine because his examination of those areas "was completely normal." Dr. TS also explained that he did not assign a lumbar neurological rating because his examination did not demonstrate that such a rating was justified. Finally, Dr. TS stated that he assigned a zero percent for the lumbar ROM component of the claimant's IR because the claimant invalidated his lumbar ROM testing during his reexamination of June 30, 2000.

The hearing officer did not err in giving presumptive weight to the designated doctor's IR under Sections 408.122(c) and 408.125(e). The difference between the designated doctor's certification and that of Dr. ES is attributable to differences in medical opinion as to what ratings to assign to the claimant's cervical and thoracic spine for the specific disorder component, what ratings to assign for the cervical and lumbar ROM component, and what rating to assign for the lumbar neurological component. The treating doctor's opinion on the rating to assign for each of those factors does not rise to the level of the great weight of medical evidence contrary to the designated doctor's report. Accordingly, the hearing officer did not err in giving presumptive weight to the designated doctor's report under Sections 408.122(c) and 408.125(e) and in determining that the claimant's IR is 13% as certified by the designated doctor selected by the Commission.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge